

Transcript Prepared By the Clerk of the Legislature
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Judiciary Committee
March 30, 2010

[LR411 CONFIRMATION]

The Committee on Judiciary met at 1:00 p.m. on Tuesday, March 30, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR411 and gubernatorial appointments. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Amanda McGill; and Kent Rogert. Senators absent: Scott Lautenbaugh. [CONFIRMATION]

SENATOR ASHFORD: Why don't we start with the gubernatorial hearings--confirmation hearings for the Crime Victims Reparations Committee? And we don't have anyone here, I don't believe, but we do have...Brenda Smith is the first appointee. Does anyone have any questions about...regarding Brenda Smith's appointment? [CONFIRMATION]

SENATOR COUNCIL: If I can speak in favor of Ms. Smith for those of you who may not know her. She retired after a career with the Omaha Police Department. She was a deputy chief... [CONFIRMATION]

SENATOR ASHFORD: Oh, is this...is this? Oh, yeah. [CONFIRMATION]

SENATOR COUNCIL: ...and worked with a lot of neighborhood associations and others. And I am pleasingly surprised that Brenda is interested in serving. I think she'd be a great addition. (See also Exhibits 1 and 2) [CONFIRMATION]

SENATOR ASHFORD: Yeah, that is cool. Great. Okay. Do we have a motion on Brenda's appointment? [CONFIRMATION]

COMMITTEE CLERK: Do we have to...I think we have to be in exec... [CONFIRMATION]

SENATOR COUNCIL: So moved. Do we have to...no, no. [CONFIRMATION]

SENATOR ASHFORD: Do we? No. [CONFIRMATION]

COMMITTEE CLERK: No? [CONFIRMATION]

SENATOR COUNCIL: These are just confirmations. [CONFIRMATION]

SENATOR ASHFORD: These are confirmations. [CONFIRMATION]

SENATOR LATHROP: Well, since we skipped the hearing, we might need to go into exec to move her. [CONFIRMATION]

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SENATOR ASHFORD: All right. Well, then let's go to...let's go to the next one then. Candice Batton? And anyone have any comments about Candice Batton? Okay. Then let's go into exec session. (See also Exhibits 3 and 4) [CONFIRMATION]

COMMITTEE CLERK: Brad, you have a (inaudible) resolution. Senator (inaudible) over there. [CONFIRMATION]

SENATOR COUNCIL: You have to have a hearing on my resolution. And then you can go into executive session. [CONFIRMATION]

SENATOR ASHFORD: Oh, we have a hearing. Do we have...we have a resolution. [CONFIRMATION]

SENATOR LATHROP: We have somebody here that's an unfamiliar face. [CONFIRMATION]

SENATOR COUNCIL: She's an intern. [CONFIRMATION]

SENATOR LATHROP: Oh, oh (inaudible) (laughter). [CONFIRMATION]

SENATOR ASHFORD: Well, why don't you introduce yourself? I thought we...she did once. [CONFIRMATION]

SENATOR COUNCIL: She's introduced herself (laughter). But do it again. Senator Lathrop (inaudible)...wasn't here. [CONFIRMATION]

SENATOR LATHROP: Now I'm embarrassed because I think I have met you (laughter) Sorry. It usually takes me about six times before I remember somebody's name. Right, whatever your name is? (Laughter) There's somebody from the Lincoln Journal Star here. [CONFIRMATION]

SENATOR ASHFORD: I'm sorry, Brenda. I didn't know we were doing all this stuff today. I thought we were just doing that bill. [CONFIRMATION]

SENATOR COUNCIL: Mr. Chairman, members of the Judiciary Committee, I appear before you this afternoon introducing LR411. When I introduced LR411, I guess I was not expecting it to receive the type of attention that it did receive, and I guess I should not have been surprised because it actually asked the Legislature to urge government attorneys, private attorneys, and fire investigators to review questionable arson convictions. The purpose of the resolution was just to get these entities to conduct internal reviews of their arson investigation practices because it is not clear whether the state of Nebraska authorities who investigate arson crimes use the same investigative standards, and there is a nationally published set of investigative standards. The

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National Fire Protection Association 921 is a nationally developed set of standards for fire investigation, and it takes into account a number of scientific methods of investigating arson. And the reason the issue is of such interest to me is as all of you know of my opposition to the death penalty. And Supreme Court Justice Scalia had made the statement in the case that whenever there's a case of an innocent person being executed, you should shout it from the rooftops. Well, Texas, it has been learned did execute someone who was actually innocent, and his conviction was for arson. And the issue was that the arson investigative techniques that were employed did not follow these national standards, and had they followed the national standards, perhaps Mr. Woodham (phonetic) would not have been convicted and then ultimately executed for a crime he did not commit. So that the actual purpose of LR411 is to just make sure that in the state of Nebraska we are using these nationally developed scientific standards for conducting arson investigations. And if you review the Web site, there is a national committee just like the Building Codes Committee; you can think of any other area where there are national standards. And I just looked to see if Nebraska had a representative on the National Rules Making Committee or Standards Setting Committee, and we don't. And I don't know whether or not the State Fire Marshal or our county sheriffs or local police authorities use the NFPA 921, so that's the purpose of the resolution is to urge the authorities who are responsible for conducting arson investigations, particularly since we have 26 people who are currently incarcerated for arson related offenses, don't know, you know, what were the standards in conducting the investigation that led to the determination that arson was at play. But I think that we have...the state should have an interest in making sure that we are conducting arson investigation, using the best scientific methods for making those determinations that are available. So with that, I'll answer any questions you may have. [LR411]

SENATOR ASHFORD: Okay, any questions of Senator Council? That's...I didn't realize what your connection was, but that is very interesting. Okay, thank you. Thanks, Brenda. [LR411]

SENATOR COUNCIL: Okay. [LR411]

SENATOR ASHFORD: Do we have a motion to go into exec session? [LR411]

SENATOR ROBERT: Yeah. [LR411]

SENATOR ASHFORD: Okay. [LR411]